IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.548 OF 1989
A/w Civil Application No.155 of 2001

Narayan Bhimrao Mule and Anr. .. Appellants.
Vs
Bhausaheb A Mule and Anr. .. Respondents.

Mr T.D.Deshmukh i/b Mr A.A.Kumbhakoni,for the appellants.
Mr. R.M.Hardas i/b Mr P.N.Joshi, for respondent nos 1 and 2.

CORAM : D.B.BHOSALE,J.
DATE : 14.02.2007

ORAL JUDGMENT:

1. By this second appeal, the appellants have impugned the judgments and orders passed by the courts below by which their suit for permanent injunction came to be dismissed. This Court, on 16.10.1989, had passed the following order.

> "Counsel for the appellants is heard. The central question is whether the disputed mound (Tal) is part of Block No. 49 or Block No.50. Block No.49 belongs to appellants-plaintiffs and Block No.50 to the respondents. The only correct solution for the problem was to get a surveyor appointed to look into the village papers, survey the lands and determine the question. Instead of so doing,the parties went to trial examining witnesses making contrary assertion. The Court below allowed this with the result that the possibility of an error has increased.
> The DILR, Solapur is directed to depute a qualified Surveyor working under him to survey Block Nos 49 and 50 and with the help of village records, ascertain the location of the suit mound. The Commissioner will execute the Commission after notice to parties. Appellant shall deposit Rs.500/-in six weeks towards the

> commissioner's fees. This fee shall be borne by the appellants in any event.
> Awaiting report of Commissioner, adjourned to 9.1.90."

In pursuance of this order, the DILR surveyed Block nos 49 and 50, owned by the plaintiffs and the defendants respectively, with the help of village record and submitted a report. In view of the report, this court on 6.2.90 admitted the appeal. Till this date, the respondents have not raised any objections nor have they filed reply affidavit to the report of the DILR. Admittedly, the report indicates that small portion of the land owned by the plaintiffs has been encroached upon by the defendants. The map prepared by the DILR shows the encroached portion in green colour. Rest of the portion of Tal is shown in red colour, which was found in possession of the plaintiffs. Mr Deshmukh, learned counsel for the plaintiffs, submits that in the present suit the plaintiffs are not claiming possession of the encroached portion as shown in green colour on the map and they have no objection for allowing the respondents-defendants to continue with the possession of the said portion subject to their rights, if any, to file appropriate proceedings for seeking possession thereof. He further submits that he has instructions to confine relief of injunction only in respect of the portion of Tal shown in red colour on the map

restraining the defendants from encroaching upon that portion and/or disturbing their possession in respect thereof. In view of the submissions made by the learned counsel for the appellants-plaintiffs and considering that the respondents never objected to the report of the DILR, the submission of Mr Hardas, learned counsel for the respondents that the respondents never got an opportunity to cross-examine the DILR, deserves to be rejected. Such prayer was never made since the date of filing of the report, that is, 29.1.1990. In the circumstances, I dispose of the appeal in the following terms.

(i) The second appeal stands partly allowed. The impugned judgments are quashed and set aside. The respondents-defendants are permanently restrained from disturbing the possession of the appellants-plaintiffs over the portion of the land shown in red colour on the map drawn by the DILR in pursuance of the order passed by this court. Insofar as the portion of the land shown in green colour on the map is concerned, the respondents/defendants are allowed to continue to remain in possession thereof subject to the rights of the plaintiffs, if any, seeking possession thereof.

(ii) With these observations, the second appeal stands disposed of. As a consequence thereof, the civil application stands disposed of.

(D.B.BHOSALE,J.)